

**CALIFORNIA GAMBLING CONTROL COMMISSION**

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## **Initial Statement of Reasons**

California Code of Regulations, Title 4. Business Regulations  
Division 18. California Gambling Control Commission

### **Licensing Issues (Withdrawals, Denials)**

❖ **All licensees: Withdrawal of Application,  
Abandonment of Application, Appeal of Denial**

❖ **Gambling Establishment Owner Licensees/Key Employees:  
Mandatory & Discretionary Grounds for Denial**

The Gambling Control Act<sup>1</sup> provides the California Gambling Control Commission (hereafter, "Commission") the authority to issue licenses concerning gambling operations at gambling establishments.

This authority covers work permit holders, holders of findings of suitability or approvals, key employee licensees, registrants, licensees, and owner licensees of gambling establishments. The intent of such authority is to ensure that the gambling industry conducts its business with integrity, does not cheat or harm the public, and is made up of people of good character. The Commission's mandate is to ensure that the public is protected, and that any criminal or corruptive elements are excluded from the industry. The Commission performs that mandate by working in concert with the Department of Justice, Bureau of Gambling Control (previously known as the Division of Gambling Control; hereafter, "Bureau").

The Gambling Control Act is "an exercise in the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes."<sup>2</sup> The Legislative Findings and Declarations of the Gambling Control Act, Business and Professions Code, section 19801, subdivision (f), states:

Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

<sup>1</sup> Business and Professions Code, section 19800 et seq.

<sup>2</sup> Business and Professions Code, section 19971.

The Commission is tasked with carrying out this legislative intent by

- Ensuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.<sup>3</sup>
- Ensuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.<sup>4</sup>

### **Section 12002. General Definitions.**

Subsection (g) of this regulation is being amended to allow for delegation of the Executive Director's duties. This clarifies the delegation of certain functions and continuation of duties being performed should the position become vacant.

Pursuant to Government Code section 7:

Whenever a power is granted to, or a duty imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code provides otherwise.

This amended definition thus clarifies that the Executive Director may delegate, in accordance with the Government Code. Because the question arises with some frequency, it is important to stress in the definition for purposes of clarity.

### **Section 12047. Withdrawal of Applications.**

### **and Section 12048. Abandonment of Applications.**

In some instances, a person will apply for licensure but not remain employed by a gambling establishment or provider of proposition player services. These regulations seek to stop the application process and background investigation and perhaps generate a refund of background investigation deposits, if appropriate. In the interests of cost-efficiency and time management, allowing a person to withdraw an application or allowing Bureau or Commission staff to determine that an application is abandoned will give staff the opportunity to focus on applications for persons who remain employed and wish to be licensed.

Business and Professions Code section 19869 contemplates the withdrawal of an application before the final action of the Bureau (which is the recommendation report to the Commission), but also gives the Commission the authority to deny the request and have the Bureau complete a background investigation should the request not be consistent with the public interest and the policies of the Gambling Control Act.

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<sup>3</sup> Business and Professions Code, section 19823, subdivision (a)(1).

<sup>4</sup> Business and Professions Code, section 19823, subdivision (a)(2).

Business and Professions Code section 19869.<sup>5</sup>

A request for withdrawal of any application may be made at any time prior to final action upon the application by the chief by the filing of a written request to withdraw with the commission. For the purposes of this section, final action by the department means a final determination by the chief regarding his or her recommendation on the application to the commission. The commission shall not grant the request unless the applicant has established that withdrawal of the application would be consistent with the public interest and the policies of this chapter. If a request for withdrawal is denied, the department may go forward with its investigation and make a recommendation to the commission upon the application, and the commission may act upon the application as if no request for withdrawal had been made. If a request for withdrawal is granted with prejudice, the applicant thereafter shall be ineligible to renew its application until the expiration of one year from the date of the withdrawal. Unless the commission otherwise directs, no fee or other payment relating to any application is refundable by reason of withdrawal of an application.

Before an application is considered abandoned, the applicant and the applicant's employer will be sent notice by certified mail, to ensure that an application is not deemed abandoned due to a misunderstanding or miscommunication.

**Section 12050. Denial; Appeal of Denial of application for license, registration, permit, or finding of suitability.**

The Gambling Control Act provides for the Commission to grant or deny licensure requests. A regulation detailing the process for denial and appeal of a denial is necessary so that applicants understand and can use their due process rights.

Pursuant to Business and Professions Code, section 19826, the Bureau is charged with investigating applicants for licensure under the Gambling Control Act. If, as a result of an investigation, the Bureau determines that a license, permit, finding of suitability, or approval should be not be issued, or should be issued with condition(s), the Bureau issues a recommendation to the Commission. This regulation would ensure that a Bureau or Commission staff recommendation for denial or imposition of condition(s) is communicated to the applicant, and that the applicant is afforded the opportunity to be heard.

An evidentiary hearing concerning a denial may be heard by the Commission under the Gambling Control Act<sup>6</sup> or may be forwarded<sup>7</sup> to the Office of Administrative Hearings for

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<sup>5</sup> As amended by Statutes of 2007, chapter 176 § 24 (Senate Bill 82), effective August 24, 2007.

<sup>6</sup> Business and Professions Code, sections 19870 and 19871.

<sup>7</sup> Pursuant to Business and Professions Code, section 19825.

formal hearing under the Administrative Procedure Act<sup>8</sup>, in the discretion of the Commission<sup>9</sup>.

If the Commission chooses to conduct the hearing, this proposed regulation establishes procedures to implement Business and Professions Code sections 19870 and 19871. The regulation provides further details concerning the conduct of the hearing, including witnesses, evidence, creating a record, and issuing a written decision. Discovery, as indicated in Business and Professions Code section 19871, is fleshed out in this proposed regulation. Redaction is provided as an option, as a way to present information relied upon for the case in the original document format and is a commonly-used vehicle in administrative hearings.

Government Code section 11405.80 defines “presiding officer” as the agency head, member of the agency, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding. It is appropriate for the presiding officer to rule on admissibility or objections.

In the event that the Bureau does not have a representative to present the case, or the Commission does not request a section of the Attorney General’s Office or outside counsel to represent the Commission, the Commission may have a staff member present the case. Such staff member would be segregated (by way of an “ethical firewall”) from the case, as is required by case law.<sup>10</sup>

In the event of an adverse ruling, provision is made for a request for reconsideration at the discretion of the Commission.

Judicial review is also specified for applicants who want to appeal a final decision of denial or imposition of conditions.

#### **Section 12348. Mandatory and Discretionary Grounds for Denial of Application for a State Gambling License or Key Employee license.**

The Gambling Control Act and other laws (such as the Family Code provision regarding nonpayment of custodial support) provide statutory directives for mandatory denials of applications for gambling establishment owner licensees or key employees. The Commission may also deny an application on discretionary grounds, and those are listed in subsection (b) of this proposed regulation.

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<sup>8</sup> Government Code, section 11500 et seq.

<sup>9</sup> Business and Professions Code, section 19825..

<sup>10</sup> See, generally, *Howitt v Superior Court* (1992) 3 C.A.4th 1575; *Nightlife Partners, Ltd. v City of Beverly Hills* (2003) 108 Cal.App.4th 81; *Quintero v City of Santa Ana* (2004) 114 Cal.App.4th 810; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, (“Quintanar”) (2006) 40 Cal.4th 1; *Rondon v. Alcoholic Beverage Control Appeals Bd.*, 2007 WL 1417453, 2007 DJDAR 8618 (Cal.App. 6 Dist. May 15, 2007).

## Required Determinations

### LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

### REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of processing or denying applications under the Gambling Control Act.

### REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Commission is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

### IMPACT ON PRIVATE PERSONS

The Commission is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

### IMPACT ON BUSINESS

The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.